IN THE HIGH COURT OF BOMBAY AT GOA
****

CRIMINAL APPEAL NO. 30 OF 2003

Shri Ashok Yeshu Sankwalkar,
w/o late Shri Andre Xisto
Das Mendes, landlord, r/o
H.No.168, Penta, Chicalim,
Goa. ... Appellant

Versus

1. Shri J. J. Rodrigues, major
in age, retired, landlord,
r/o Rodrigues Manor,
H.No.248, Chicalim,Goa and

2. State, represented through
Public Prosecutor, High Court. ... Respondents.

Shri E. O. Mendes, advocate for the appellant (absent).

Shri V. B. Nadkarni, Senior Advocate with Y. V. Nadkarni, advocate for the respondent.

Shri S. N. Sardessai, Public Prosecutor for the State.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 22nd March, 2004.

ORAL JUDGMENT (Per Hardas, J.)

When this Appeal was called out for hearing none appeared for the appellant. Shri V. B. Nadkarni, learned Senior Counsel represents the respondent no.1/accused. This Court by its Order dated 5th November, 2003, had directed the expeditious disposal of this Criminal Appeal. The paper book had been and the Appeal was called out for hearing on 11th February, 2004. On that date, the counsel representing the appellant was absent and, therefore, the hearing of the Appeal was deferred till 1st March, 2004. The Appeal was, thereafter, listed for hearing on 3rd March, 2004, on which

date also, the learned counsel for the appellant was absent. Thereafter, when the Appeal was listed for hearing on 8th March, 2004, the learned counsel appearing for the appellant sought leave to add the State of Goa as a party-respondent. The amendment was carried out and, accordingly, the Appeal is listed for hearing today. As stated by us, the learned counsel for the appellant is absent when the matter is called out.

2. This Appeal is directed against the Judgment of the learned Judicial Magistrate First Class, Vasco da Gama, dated 13th August, 2002, in Criminal Case No. 188/P/99/D acquitting the respondent/accused for offences punishable under Sections 403, 409 and 477-A of the Indian Penal Code. The respondent no.1/accused is stated to be 88 years old today and was 86 years old when his statement under Section 313 Cr.P.C. came to be recorded.

3. The learned counsel for the respondent no.1/accused has been present on the dates when the matter has been called out for hearing and we must record our anguish that because of the absence of the learned counsel for the appellant the hearing of the Appeal has been postponed from time-to-time. Today, no request for adjournment is made, nor do we see any reason to adjourn the hearing of the Appeal. However, since the appellant before us is not represented, we refrain from making any pronouncement on the merits of the

Appeal, but dismiss the Appeal for want of prosecution.

Accordingly, Criminal Appeal No.30 of 2003 is dismissed for want of prosecution.

P. V. HARDAS, J.

D. G. KARNIK, J.

mc.